DECISIONS IN THE CHINATOWN CASES

No Civil Commotion Here at the Time of the Fire.

SO SUPREME COURT HOLDS IN ONE APPEALED SUIT FOR INSURANCE

In Two Others it is Declared That the Conflagration was Done by the Act of the Civil Authorities.

Three of the Chinatown insurances were decided yesterday by the Supreme Court.

In the case of the Yee Wo Chan Company against the Transatlantic Fire Insurance Company in which judgment was given for the plaintiffs by Judge Silliman some months ago for $5000, the Supreme Court affirms the decision and overrules the exceptions of the defendants.

In Yee Wo Chan against the Magdeburg Fire Insurance Company in which the defendants were given judgment by Judge Silliman the decision is likewise affirmed.

The third case, the Hawaii Land Company against the Lion Fire Insurance Company, was submitted on an agreed statement of facts and it is decided for the defendants in the same opinion and on the same grounds as the Magdeburg case.

These three cases arose out of the burning of Chinatown on January 20th last and are representative of a large number of others. Chinatown was in a very insanitary condition at the time of the breaking out of the plague and the district was placed in quarantine by the Board of Health. Early in January the Board adopted fire as a means of disinfection and thereafter from time to time until the 20th of that month burned a number of buildings. On the 10th of January a resolution was passed by the Board declaring that a portion of the district farthest inland was in an insanitary condition and infected by plague, and that the infection could not be removed by any means but fire. All the buildings within that portion of the block were ordered destroyed.

The fire accidentally spread to the Kaumakapili church and thence through nearly the whole of Chinatown destroying the stores owned by the plaintiffs which were several blocks from the spot where the fire originated. There was only a moderate breeze blowing at the time of the fire and no cause intervened between the setting of the fire by order of the Board of Health and the burning of the property owned by the plaintiffs.

WORDING OF POLICIES.

The difference in the cases and their outcome lies in the wording of the policies. In the case of the Yee Wo Chan Company against the Transatlantic Company which was decided for the plaintiffs the policies excepted among other things loss resulting from civil commotion and it is on this ground that the insurance company refused to pay the policy, claiming that there was a civil commotion in Honolulu as a result of the bubonic plague epidemic. In this case the court holds:

"That phrase 'civil commotion' is no doubt of broad meaning, but it cannot be stretched to cover the condition prevailing in this city during the period preceding the fire in question. A civil commotion requires the wild and irregular action of many persons assembled together. It is true that in this case the business of the courts and of the community was more or less interrupted, but that is not sufficient to make a civil commotion. There was nothing of a wild, tumultuous, violent, turbulent or seditious nature which the phrase is generally understood to imply and which it was intended to imply in this policy as shown by the words with which it is associated. The interruption to business was orderly, deliberate and for peaceful and laudable purposes. . . The plague itself was not a civil commotion. There was, it is true, considerable excitement after the fire department lost control of the fire, for several thousand people had to leave their homes in haste in order to escape the flames and had to be safely conducted elsewhere and not allowed to scatter in the uninfected portions of the city, but if there was a civil commotion then it did not cause the fire; the fire caused it."

It is held that: "The circumstances set forth in the opinion did not show that the loss was caused by civil commotion so as to exempt the insurers under the clause in the policy that they should not be liable for loss or damage caused by civil commotion," and judgment is given for the plaintiffs.

BY CIVIL AUTHORITY.

Quite a different state of facts exists in the other two cases, the Hawaii Land Company vs. the Lion Insurance Company and Yee Wo Chan against the Magdeburg Insurance Company. In the policies sued upon there was a clause which expressly exempted the companies from liability "for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority." It was upon this last clause in the policy that the defendants relied and this point settled the case in their favor.

The language of the policy is analysed at great length by the opinion the conclusion being arrived at that the words, "directly or indirectly" applied to the expression, "by order of the civil authority." The contention that to exempt the insurer from liability the order must be lawful and that the Board of Health could not lawfully burn buildings. The court holds that the insured cannot raise such a question.

THE BOARD OR PLAGUE?

Much space is devoted to the question whether the order of the Board was the cause of the loss from a legal standpoint or whether the plague was the cause. A long line of decisions is quoted on this score.

"Where loss by fire," the opinion says, "is insured against and 'loss caused directly or indirectly by the order of any civil authority' is excepted, the order and not the fire should be regarded as the cause within the meaning of the contract. But since loss by plague is neither insured against nor excepted, the plague cannot be regarded as the cause of the loss of property destroyed by fire ordered by civil authority, though in consequence of the plague. We may add also that here as in the Virginia case (mentioned in the opinion) there was not the same pressing necessity for the destruction of the property either in point of time or as to the method of destroying it as there was in the case of Insurance Company against Boon (cited above). Nor was there the same recognized duty to destroy it at all. In cases of that kind there was a well-recognized military necessity and duty to destroy property of that kind under such circumstances, so that in making the contract such losses could fairly be considered as intended to come within the scope of the exception. But there is no well-known necessity or duty or practice of burning buildings in case of plague or other infectious diseases. On the whole we are of the opinion that within the meaning of these policies the loss must be regarded as caused by the order of the Board of Health and not by the bubonic plague. Whether the Board of Health was justified in issuing the order is not before us."

Both the opinions are written by Chief Justice Frear and are concurred in by Justices Galbraith and Perry.

The attorneys for the Yee Wo Chan Company were Paul Neumann and W. A. Whiting, and for the Magdeburg insurance Company and the Transatlantic Insurance Company were L. A. Thurston and Robertson and Wilder. J. T. DeBolt was attorney for the Hawaii Land Company and Castle and Weaver for the Lion Insurance Company.

KOOLAU CASES RESTORED.

The "Koolau cases," so called, five in number which were thrown out of court at the beginning of the August term by Judge Humphreys for failure of the attorneys to appear, were all ordered placed on the calendar by the Supreme Court yesterday.

The decision in each is the same and is: "The exception to the order of dismissing the appeal is sustained and the case is remanded to the Circuit Court, First Circuit, for further proceedings consistent with this ruling. An opinion will be filed later."

The titles of the five cases are John Bell vs. Palea, John Bell vs. F. Pahia, H. H. Parker, John Bell and William Henry vs. Palea, and F. Pahia vs. Palea. They arose out of trespasses by cattle on the Koolau side of the island and have been appealed from the District Court to the Circuit Court and then to the Supreme Court.

CARSON CASE GOES TO HIGHER COURT.

The William Carson case will be appealed to the Circuit Court of Appeals of the Ninth Circuit, sitting in San Francisco. The Supreme Court last week rendered judgment for the owners and agents of the Carson, George U. Hind et al against the Wilder's Steamship Company, owners of the Claudine, which ran the Carson down and sank her and now the Wilder Company propose to take the case to San Francisco on the questions of law and of fact which are involved. The notice of appeal was filed yesterday by Kinney, Ballou & McClanahan, on behalf of the Wilder company.

CHARGES AGAINST GUARDIAN.

In February last charges were filed against John Pae, guardian of Keaiohaokalani (k), a minor, of Ewa, by Frank Archer, and these are to be investigated in the courts. An order has been issued by Judge Humphreys yesterday setting the case for Friday.

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Fruit Shippers Fail.

LOS ANGELES, Oct. 17.—Creditors of the Briggs-Spence Company, fruit shippers, are hoping that some arrangements can be made by which the young men may resume business. The firm, composed of George M. Briggs of Chicago and W. Glenn Spence of this city, is in financial difficulty, owing $75,000 with comparatively little assets. Of this amount probably $40,000 is owing to fruit growers. Of the other indebtedness the principal item is $3,500, due the State Bank & Trust Co. It is understood that the fruit growers are inclined to be lenient with the young men, whose enterprise has temporarily gone awry. Glenn Spence has about $40,000 interest in the estate left by his father, E. F. Spence of Monrovia, and the statement is made today that his mother will come to his assistance.

Vote the Straight Republican Ticket